



Yale Law School

ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC

Comment submission to the Forced Labor Enforcement Task Force, DHS Docket No. DHS-2022-001

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The Allard K. Lowenstein International Human Rights Clinic¹ is pleased to submit this comment to the Forced Labor Enforcement Task Force in relation to the implementation of the Uyghur Forced Labor Prevention Act (UFLPA) in conjunction with Section 307 of the Tariff Act.

¹ The Allard K. Lowenstein International Human Rights Clinic (“the Clinic”) is a Yale Law School course that gives students first-hand experience in human rights legal practice. The Clinic undertakes litigation and research projects on behalf of non-governmental organizations and victims of human rights abuse. It prepares submissions to governments and U.S. and international courts and tribunals. The Clinic has done work in many and varied fields of international human rights law, including the prohibitions against forced and child labor. The Clinic has conducted research and provided briefs and other documents for the African Commission on Human and Peoples’ Rights, the European Court of Human Rights, the Inter-American Courts of Human Rights, and many U.S. courts, congressional committees and executive branch agencies.

Introduction

In recent years, the Chinese government has intensified its repression of the Uyghur and other Turkic peoples. In May 2013, the government launched its “Strike Hard Campaign Against Violent Terrorism,” beginning a new phase of securitizing the Xinjiang Uyghur Autonomous Region (Xinjiang).² Since then, the government has arbitrarily detained close to two million ethnic Turkic people³ in several hundred facilities, including reeducation camps, prisons, and pre-trial detention centers.⁴ Recent evidence demonstrates that the Chinese government has continued to build new and more permanent facilities for detaining Uyghurs. Particularly grave concerns about atrocities against the Uyghurs include the re-creation of concentration camps, the growth of an Orwellian-style surveillance state, and the deployment of advanced surveillance technology, which, as a powerful tool for state control, exacerbates human suffering in the camps. At the same time, the global economy is tainted by Uyghur slavery and forced labor. Such exploitation does not stop at the Chinese border, as these goods have continued to reach North American and other markets. China’s egregious treatment of the Uyghurs, widely denounced by international human rights organizations as crimes against humanity and deemed genocide by the U.S. State Department and the parliaments of several western democratic countries,⁵ is a crisis for the world and a test of the international commitment to universal human rights, including when they might be in tension with economic power.

The Allard K. Lowenstein International Human Rights Clinic applauds the passage of the Uyghur Forced Labor Prevention Act (UFLPA) as a necessary step for the United States to take in order to denounce the Chinese government’s human rights abuses in Xinjiang and to affirm its solidarity with the Uyghur people and other targeted ethnic groups. If properly implemented, this pathbreaking legislation would enable the United States to fulfill the act’s explicit mandate to “lead the international community in ending forced labor practices wherever such practices occur,”⁶ including in Xinjiang. To accomplish this goal, the UFLPA’s “clear and convincing evidence” standard for rebutting the presumption that goods produced in or derived from Xinjiang were made with forced labor and may not be imported into the United States must be rigorously upheld, in accordance with both Congress’s intent and the United States’ international human rights obligations. Achieving the UFLPA’s goals further requires recognition that the vast scale of forced labor in Xinjiang, combined with China’s blocking laws, defies conventional norms of due diligence. Companies cannot prove the absence of forced labor in their supply chains through perfunctory adherence to procedural requirements, and the DHS must not allow companies to evade the necessarily high evidentiary standard that the UFLPA requires.

² Jérôme Doyon, ‘Counter-Extremism’ in Xinjiang: Understanding China’s Community-Focused Counter-Terrorism Tactics, WAR ON THE ROCKS (Jan. 14, 2019), <https://warontherocks.com/2019/01/counter-extremism-in-xinjiang-understanding-chinas-community-focused-counter-terrorism-tactics/>.

³ Lindsay Maizland, *China’s Repression of Uyghurs in Xinjiang*, COUNCIL ON FOREIGN RELS. (Mar. 1, 2021), <https://www.cfr.org/backgrounder/chinas-repression-uyghurs-xinjiang#:~:text=About%20eleven%20million%20Uyghurs%E2%80%94forced%20labor%2C%20and%20forced%20sterilizations.>

⁴ HUM. RTS. WATCH & MILLS LEGAL CLINIC, “BREAK THEIR LINEAGE, BREAK THEIR ROOTS”: CHINESE GOVERNMENT CRIMES AGAINST HUMANITY TARGETING UYGHURS AND OTHER TURKIC MUSLIMS 2 (2021), https://www.hrw.org/sites/default/files/media_2021/04/china0421_web_2.pdf.

⁵ *Id.*

⁶ Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, § 1(2), 135 Stat. 1525, 1525 (2021) (codified as amended at 22 U.S.C. § 6901 note).

Drawing on U.S. Customs and Border Protection (CBP) decisions, comparative law sources, and international human rights principles, and in consultation with a Yale Law School-affiliated Uyghur attorney, this comment proceeds in six parts. First, it analyzes the “rebuttable presumption” and “clear and convincing evidence” standards articulated in the UFLPA, drawing on the interpretation of similar language in the Countering America’s Adversaries Through Sanctions Act⁷ (CAATSA) for guidance.

Second, it introduces the caveat that, although the example of CAATSA is instructive, companies must be held to a higher standard when implementing the UFLPA, due to the scale and international reach of state-sponsored forced labor in Xinjiang, as well as the Chinese government’s systemic efforts to evade foreign sanctions.

Third, this comment argues that, to meet the clear and convincing evidence standard, it is necessary—although insufficient—for companies to engage in a robust due diligence program specifically tailored to the Xinjiang context. Despite China’s attempts to censor all mentions of Uyghur forced labor, due diligence requires clear statements of policy that are disseminated and operationalized throughout a company’s supply chain.

Fourth, the comment emphasizes that rigorous third-party audits are essential to meeting the heightened standard of clear and convincing evidence under the UFLPA. This procedural requirement is exceedingly difficult to meet, due to China’s blocking laws, police-state atmosphere, intimidation of workers, extreme surveillance measures in Xinjiang, and the resulting exodus of independent auditors. Nonetheless, given the legal and financial pressure China exerts on companies to ignore the reality of human rights abuses in Xinjiang, these audits remain necessary for companies to meet their obligations under U.S. law and to conform with international human rights norms.

Fifth, the DHS should ensure that these due diligence requirements apply to all U.S. companies, regardless of size, and to direct and indirect suppliers throughout their supply chains.

Sixth, DHS implementing regulations must address the issue of companies evading UFLPA requirements through the manufacture of goods produced “in part” with Uyghur forced labor and completed or repackaged in other parts of China.

Seventh, and finally, the DHS must emphasize that, notwithstanding the UFLPA’s geographic focus on Xinjiang, it is categorically unacceptable for companies to exploit Uyghur forced labor, irrespective of the region of China in which this exploitation occurs.

The human rights crisis in China is severe, and the international community’s response must be correspondingly stringent. As the OECD Guidelines on Multinational Enterprises urge, “[a] State’s failure . . . to implement international human rights obligations . . . does not diminish the expectation that enterprises respect human rights.”⁸ When implementing the UFLPA, the DHS should ensure that companies are not permitted to water down the Act’s rigorous evidentiary requirements through corporate lobbying or to evade responsibility with empty procedural gestures.

⁷ Countering America’s Adversaries Through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886 (2017) (codified as amended in scattered sections of 22 U.S.C.).

⁸ *OECD Guidelines for Multinational Enterprises*, ORG. FOR ECON. COOP. & DEV. ¶ IV(38) (2011), <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

1. The text of the UFLPA places high burdens of production and persuasion on importers.

The rebuttable presumption of the UFLPA imposes a high and strict standard on importers. Under the UFLPA, the CBP Commissioner must “apply a presumption” that goods “mined, produced, or manufactured wholly or in part in the Xinjiang”⁹ region were produced with forced labor in violation of 19 U.S.C. § 1307. To gain entry for these goods into the United States, an importer is required to rebut this presumption by fully complying with guidance and regulations, “completely and substantively respond[ing] to all inquiries for information,” *and* producing “clear and convincing evidence, that the good, ware, article, or merchandise was not mined, produced, or manufactured wholly or in part by forced labor.”¹⁰

For guidance on interpreting this standard, we can look to CBP’s application of identical language in CAATSA. Similar to the UFLPA, CAATSA aims to prevent the import of goods produced through state-sponsored forced labor. Section 302(A) of CAATSA—“Rebuttable Presumption Applicable to Goods Made with North Korean Labor”—states that goods “mined, produced, or manufactured wholly or in part by the labor of North Korean nationals or citizens shall be deemed to be prohibited under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)” and provides a means of rebutting this presumption by showing with “clear and convincing evidence, that the goods . . . were not produced with . . . forced labor.”¹¹

CBP recently applied this identical standard in Headquarters Ruling H317249.¹² In this case, CBP detained two entries of clothing that were manufactured in Dandong City, Liaoning Province, China, on the suspicion that the goods were produced with North Korean labor in violation of CAATSA.¹³ In interpreting the meaning of the clear and convincing evidence standard, CBP noted that it is “a higher standard of proof than a preponderance of the evidence, and generally means that a claim or contention is highly probable.”¹⁴ This is a demanding standard for importers to meet, because they must both produce the evidence necessary to “place in the ultimate factfinder an abiding conviction that the truth of its factual contentions [is] ‘highly probable’” and persuade the factfinder of that truth.¹⁵

2. Given the severe human rights violations in the Xinjiang camps and China’s forced-labor factories, the information the DHS requires for importers to meet the clear and convincing evidence standard should be even greater under the UFLPA than it is under CAATSA.

Although the application of the clear and convincing evidence standard in CAATSA is instructive, the extreme circumstances surrounding forced labor in China require the DHS to take an even more rigorous approach to implementing the UFLPA than is required in the North Korean context of CAATSA.

⁹ Uyghur Forced Labor Prevention Act § 3(a).

¹⁰ *Id.* §§ 3(b)(1)(B), 3(b)(2).

¹¹ Countering America’s Adversaries Through Sanctions Act § 302(A)(a)-(b).

¹² Application for Further Review; 22 U.S.C. § 9241(a); 19 U.S.C. § 1307; Protest No. 4601-21-125334; Poof Apparel; Dandong Huayang Textiles & Garments Co., Ltd.; Forced Lab., HQ H317249 (Mar. 5, 2021), <https://rulings.cbp.gov/search?term=h317249&collection=ALL&sortBy=RELEVANCE&pageSize=30&page=1>.

¹³ *Id.* at *1.

¹⁴ *Id.* (citing *Colorado v. New Mexico*, 467 U.S. 310 (1984)).

¹⁵ *Colorado v. New Mexico*, 467 U.S. at 310 (citing *C. McCormick*, *Law of Evidence* § 320, p. 679 (1954)).

First, the Chinese market represents a vastly larger share of U.S. importers' business, both in sourcing and sales, than the North Korean market. In 2017, when CAATSA passed, North Korea exported \$1.8 billion worth of goods globally and virtually nothing to the United States.¹⁶ In the same year, Apple alone imported roughly \$15.7 billion worth of iPhone 7s from mainland China to the United States.¹⁷ The ability to sell to China's domestic market is also an extremely lucrative incentive for companies that does not exist in the North Korean context. China is the second-largest market in the world and might surpass the United States by 2028.¹⁸ While Apple cannot access the North Korean market directly, China is Apple's third-largest market; the company made \$25.8 billion from sales in China in just three months of this fiscal year.¹⁹ Many companies, like Apple, are heavily reliant on China for both production and sales and thus have a much stronger incentive to evade the UFLPA's requirements than CAATSA's.

This corporate financial motive to find loopholes in the UFLPA is compounded by the Chinese government's attempts to punish companies for acknowledging, let alone addressing, Uyghur forced labor. For example, clothing retailer H&M, which sources from China and made more than \$1 billion in revenue from China in 2020, stated that it was no longer sourcing cotton from Xinjiang, because of forced labor and ethno-religious discrimination in the region.²⁰ In the ensuing backlash, H&M was erased from China's largest e-commerce platforms and removed from Chinese map applications, causing its revenue to plummet.²¹ The backlash against H&M had a chilling effect on other companies, as many declared their commitment to continue sourcing from the Uyghur region.²² China used its market power and control over its economy to pressure companies to ignore Uyghur forced labor in their supply chains, and it worked.

A further grave obstacle to the effective implementation of the UFLPA is China's recent enactment of anti-foreign-sanctions blocking laws, aimed at countering U.S. and European sanctions against Chinese businesses and individuals.²³ Under these laws, China may institute

¹⁶ *North Korea*, OBSERVATORY OF ECON. COMPLEXITY, <https://oec.world/en/profile/country/prk?yearSelector1=exportGrowthYear23> (last visited Mar. 7, 2022).

¹⁷ *iPhone: Designed in California but Imported from China*, AL JAZEERA (Mar. 21, 2018), <https://www.aljazeera.com/economy/2018/3/21/iphone-designed-in-california-but-imported-from-china>.

¹⁸ *Chinese Economy to Overtake US 'by 2028' Due to Covid*, BBC (Dec. 26, 2020), <https://www.bbc.com/news/world-asia-china-55454146#:~:text=China%20will%20overtake%20the%20US,previously%20forecast%2C%20a%20report%20says.&text=As%20a%20result%2C%20unlike%20other,growth%20of%202%25%20this%20year>.

¹⁹ Tim Higgins & Yang Jie, *Apple Takes Smartphone Lead in China, Helping Drive Record Profit*, WALL ST. J. (Jan. 28, 2022, 7:00 AM EST), <https://www.wsj.com/articles/apple-takes-smartphone-lead-in-china-helping-drive-record-profit-11643371201#:~:text=During%20the%20iPhone%2013's%20debut,with%2016%25%20a%20year%20earlier>.

²⁰ Elizabeth Paton, *H&M Faces Boycott in China over Stance on Treatment of Uyghurs*, N.Y. TIMES (Mar. 29, 2021), <https://www.nytimes.com/2021/03/24/business/handm-boycott-china-uyghurs.html>.

²¹ Eva Xiao, *H&M Is Erased from Chinese E-Commerce over Xinjiang Stance*, WALL ST. J. (Mar. 25, 2021, 2:02 PM EDT), <https://www.wsj.com/articles/h-m-is-erased-from-chinese-e-commerce-over-xinjiang-stance-11616695377>.

²² Grady McGregor, *How Brands Are Responding to China's Xinjiang Boycotts: Deleting Past Statements or All-Out Flip-Flops*, FORBES (Mar. 26, 2021), <https://fortune.com/2021/03/26/brands-respond-xinjiang-cotton-china-hm-zara-hugo-boss-fila/>.

²³ Burt Braverman & Edlira Kuka, *China's Newest Anti-Foreign Sanctions Blocking Law: What We Know, What We Don't Know, and What U.S. Companies Can Do*, DAVIS WRIGHT TREMAINE, LLP (Aug. 30, 2021), <https://www.dwt.com/blogs/broadband-advisor/2021/08/anti-foreign-sanctions-law->

counter-sanctions against companies that comply with Western sanctions and restrict these companies' ability to operate in China.²⁴ The extremely broad language of these laws, combined with the lack of PRC guidance on implementation, creates a chilling atmosphere for companies that do business in China: The laws authorize the government to subject both the companies themselves and affiliated individuals to a range of penalties, including deportation and asset seizure, for any alleged infraction.²⁵

Moreover, China is likely to assist companies in evading the UFLPA. China has long been suspected of helping North Korea and companies using North Korean forced labor to avoid U.N. and U.S. sanctions.²⁶ This help in evading sanctions, combined with the fact that Chinese state-owned enterprises (SOE) are drivers of the Chinese economy, exacerbates the difficulty of securing reliable supply-chain information, as the Chinese government has the knowledge, authority, ability, and motive to actively facilitate evasion of the UFLPA. The influence of SOEs in the Chinese economy has expanded in recent years, including by absorbing many private companies.²⁷ Because companies have large economic incentives to evade the UFLPA and the Chinese government has legally mandated this evasion as the price of doing business in the country, implementing the UFLPA in a manner consistent with legislative intent is much more difficult for goods originating in China than in North Korea. Correspondingly, the DHS must increase its vigilance and impose a more onerous burden to meet the clear and convincing evidence standard articulated in the UFLPA than it has required under CAATSA.

Second, a regime of regulations and sanctions, namely 31 C.F.R. part 510, works in conjunction with and supports CAATSA to deter U.S. importers from using North Korean forced labor. The UFLPA, on the other hand, is stand-alone legislation. Unlike CAATSA, where CBP could rely on simultaneous pressure and investigation from other agencies to bolster the deterrent effects of its own requirements on importers, the UFLPA requires CBP alone to fulfill Congress's purpose to "ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market."²⁸ To take into account the increased share of this protective mission resting on the agency's shoulders, the DHS must issue guidance for importers that sets a high and exacting standard for rebutting the presumption of forced labor and should proceed with heightened skepticism of importers' claims to meet the standard. To further this objective, the DHS should require due diligence programs that directly address Uyghur forced labor and rigorous third-party audits free

china#:~:text=The%20AFSL%20is%20the%20third,sanctions%E2%80%94particularly%20U.S.%20sanctions%E2%80%94on.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Jeff Kao, Raymond Zhong, Paul Mozur, Aliza Aufrichtig, Nailah Morgan & Aaron Krolik, 'We Are Very Free': How China Spreads Its Propaganda Version of Life in Xinjiang, N.Y. TIMES (June 22, 2021), <https://www.nytimes.com/interactive/2021/06/22/technology/xinjiang-uyghurs-china-propaganda.html>.

²⁷ He Huifeng, *China's State-Owned Enterprise Reform: Shenzhen Tries to Lure Loyal Party Cadres into Oversight Roles*, S. CHINA MORNING POST (July 28, 2021, 5:30 PM), <https://www.scmp.com/economy/china-economy/article/3142870/chinas-state-owned-enterprise-reform-shenzhen-tries-lure>.

²⁸ Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1525 (2021) (codified as amended at 22 U.S.C. § 6901 note).

from Chinese government intervention, regardless of China’s attempts to thwart these requirements.

3. The DHS should require due diligence programs that specifically acknowledge, address, and target Uyghur forced labor.

Given the economic pressure on companies to evade the UFLPA’s requirements, as well as China’s determination to facilitate evasion, an internal due diligence program alone is insufficient to reach the clear and convincing evidence standard set by the UFLPA. Nonetheless, a robust due diligence program—combined with a rigorous independent third-party audit, as described in the following section—remains a necessary element for companies to convince the factfinder that there is a “high probability” that their goods are not produced, in whole or in part, by Uyghur forced labor. To ensure that due diligence is an effective mechanism for uncovering labor rights abuses, companies must follow best practices as codified by the United Nations Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines on Multinational Enterprises, while also tailoring their approach to respond to the unique exigencies presented by the Uyghur context.

One of the core tenets of standards that have been established to ensure respect for human rights in business activities is to have a clear code of conduct by which a business enterprise commits itself to ethical practices. The UNGP urges that companies adopt, *inter alia*, “[a] policy commitment to meet their responsibility to respect human rights.”²⁹ To be effective, this statement of policy must be “approved at the most senior level of the business enterprise,” “informed by relevant internal and/or external expertise,” and stipulate “the enterprise’s expectations of personnel, business partners and other parties directly linked to its operations, products, or services.”³⁰ Moreover, this statement must be “publicly available and communicated internally and externally to all personnel, business partners and other relevant parties” and “reflected in operational policies and procedures necessary to embed it throughout the business enterprise.”³¹

The DHS recognized the importance of a tailored and context-specific due diligence program when it issued guidance for complying with CAATSA. In its guidance on CAATSA implementation for importers, the DHS stated that crucial elements of a comprehensive due diligence program included “[c]ompany policies, and evidence of implementation, on using North Korean laborers,” “[c]ontracts with suppliers and sub-contractors that state your policy on North Korean forced labor,” and “[t]raining materials on North Korean forced labor prohibitions that have been provided to suppliers and sub-contractors.”³² As previously discussed, the context of the UFLPA requires a higher level of vigilance to reach the standard of clear and convincing evidence. Thus, effective enforcement of the UFLPA dictates that companies affirmatively acknowledge Uyghur forced labor in the statements of policy and training materials that they disseminate throughout their operations and supply chains.

²⁹ *Guiding Principles on Business and Human Rights*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. § 15(a) (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

³⁰ *Id.* § 16(a)-(c).

³¹ *Id.* § 16(d)-(e).

³² *Countering America’s Adversaries Through Sanctions Act FAQs*, DEP’T OF HOMELAND SEC. (Feb. 11, 2021), <https://www.dhs.gov/news/2021/02/11/countering-america-s-adversaries-through-sanctions-act-faqs>.

Companies cannot discharge this due diligence obligation by issuing generic statements opposing “forced labor,” and Chinese government pressure, in the form of blocking laws and other retaliatory measures, cannot excuse the use of generic statements. Such statements lack the specificity needed to ensure that all personnel are aware of the high risks associated with Xinjiang and that they are trained to operationalize these guidelines throughout the supply chain. In the context of China and Uyghur forced labor, a generic statement opposing forced labor signals that the company is attempting to appease China by ignoring the well-known and significant risk of Uyghur forced labor in sourcing from Xinjiang in particular. Companies will claim that generic statements demonstrate that their forced labor commitments are sincere, but their actual reactions to Chinese pressure demonstrate the opposite.

The U.S. chipmaker Intel faced a backlash in China for publishing a letter to suppliers on its website stating that it was “required to ensure that its supply chain does not use any labour or source goods or services from the Xinjiang region.”³³ In response, Intel omitted this paragraph and any reference to Xinjiang from the letter, instead alluding vaguely to “any human trafficked or involuntary labour such as forced, debt bonded, prison, indentured, or slave labour throughout your extended supply chains.”³⁴ Moreover, Intel issued a Chinese-language statement of apology for causing “trouble” and said that the letter reflected an expression of compliance with U.S. sanctions against Xinjiang, not the company’s own stance on the issue.³⁵

Intel’s retraction and apology reveal two disturbing truths about how companies will react to the UFLPA, affirming the need for stringent implementation by the DHS. First, Intel essentially admitted that the statement was a mere expression of compliance with U.S. law and not a meaningful commitment to removing state-sanctioned forced labor from its supply chain. Correspondingly, the DHS should recognize that non-descriptive commitments in companies’ due diligence programs are meaningless and misleading efforts to appease the U.S. government. Second, Intel’s apology demonstrated that internal due diligence programming in the context of China and the UFLPA is insufficient to meet the heightened clear and convincing evidence standard. To appease the Chinese government and public, Intel admitted that that its due diligence efforts in China are a sham, and there is no reason to expect that other companies, facing the same financial incentives, will not follow suit.

Furthermore, the DHS should require companies’ codes of conduct to be current, reflecting both the escalating crisis in Xinjiang and the passage of the UFLPA. In its first ruling to address Uyghur forced labor,³⁶ CBP recognized the importance of a current code of conduct. In this ruling, under 19 U.S. Code § 1307, CBP denied a protest by Uniqlo Co., Ltd. One factor that CBP relied on in making its determination that Uniqlo had not established that the goods were not produced with forced labor was that the 2016 code of conduct Uniqlo provided in response to CBP’s request was not current.³⁷ A code of conduct from 2016 cannot reflect what

³³ *Intel Apologises in China over Xinjiang Supplier Statement*, REUTERS (Dec. 23, 2021, 4:49 AM EST), <https://www.reuters.com/technology/intel-china-apologises-over-xinjiang-supplier-statement-2021-12-23/>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Headquarter Ruling, Application for Further Review; 19 U.S.C. § 1307; Denial of Protest No. 270421154598; Uniqlo Co., Ltd.; Entry 231-2840311-6; Xinjiang Production and Construction Corps; XPCC; [] Withhold Release Order; WRO; Forced Labor, https://www.customsmobile.com/rulings/docview?doc_id=HQ%20H318182&highlight=uniqlo.

³⁷ *Id.*

the world knows about Uyghur forced labor in China today. Moreover, a current code of conduct is required to reflect the company's obligations under the UFLPA, which includes a strict rejection of Uyghur forced labor and categorical prohibition on goods produced in full or in part in Xinjiang, and the guidance that CBP will issue. Thus, the DHS should require companies to update their codes of conduct such that they are reasonably current and reflect the world's increased awareness of the scope of Uyghur forced labor in China.

Permitting ambiguous forced-labor statements in the Uyghur context would plainly contradict the objective of the UFLPA. It would enable companies to continue profiting from China's scheme of Uyghur forced labor, maintain their share of the Chinese market by avoiding the wrath of the Chinese government and public, and evade the UFLPA's high evidentiary standard. As evidence in support of rebutting the presumption of the UFLPA, generic statements are neither clear nor convincing in the context of forced labor in Xinjiang. Thus, the DHS should issue guidance consistent with legislative intent, strictly requiring companies that claim to rebut the UFLPA's presumption of forced labor to set a "zero tolerance" tone within their supply chains by being specific and unequivocal about what they must prevent: Uyghur forced labor. However, while Uyghur-specific due diligence measures are necessary evidence to convince the factfinder that there is a high probability that goods were produced without forced labor, due diligence programs alone are insufficient. Independent third-party audits are necessary to meet the UFLPA's heightened clear and convincing evidence standard.

4. Rigorous third-party audits are essential to meeting the heightened standard of clear and convincing evidence under the UFLPA.

The fact that corporate incentives in China weigh heavily against meaningful compliance with the UFLPA makes rigorous third-party audits essential for meeting the evidentiary standard for rebutting the presumption of forced labor under the UFLPA. Third-party independent audits, in principle, remove the economic self-interest that is likely to corrupt internal audits and due diligence programs. CBP regularly suggests to companies that third-party audits are of paramount importance, even when the evidentiary standard is lower than clear and convincing evidence.³⁸ For example, CBP generally requires that an unannounced and independent third-party audit, refuting each identified International Labour Organization (ILO) indicator of forced labor, be included in a petition for modification or revocation of a WRO.³⁹ CBP thus has acknowledged the value of third-party audits in all contexts.

³⁸ *Supply Chain Due Diligence*, COM. ENF'T DIV. FORCED LAB. ENF'T, U.S. CUSTOMS & BORDER PROT. (Jan. 28, 2017), https://web.archive.org/web/20220123004903/https://www.cbp.gov/sites/default/files/assets/documents/2017-Jan/170103_Forc%20Labor%20Importer%20Due%20Diligence%20Fact%20Sheet.pdf ("Audits to evaluate risks in your supply chain are available from many private sources. These audits should unannounced and conducted by independent or third party auditors.").

³⁹ *WRO Modification/Revocation Processes Overview*, FORCED LAB. DIV. FORCED LAB. ENF'T, U.S. CUSTOMS & BORDER PROT. (Mar. 20, 2021), https://web.archive.org/web/20210731180555/https://www.cbp.gov/sites/default/files/assets/documents/2021-Mar/Final_Modification%20Revocation%20Process%5b5%5d.pdf ("CBP . . . emphasizes the need for evidence demonstrating that all identified ILO indicators of forced labor are remediated. Information that CBP generally considers beneficial includes . . . [e]vidence of implementation and subsequent verification by an unannounced and independent third-party auditor . . ."); see also *Updates on the Clarification on the U.S. Customs and Border Protection's Withhold Release Order (WRO)*, FGV HOLDINGS (Oct. 15, 2020), https://www.fgvholdings.com/press_release/updates-on-the-clarification-on-the-u-s-customs-and-border-

The importance of independent third-party audits is affirmed in the charter of the Fair Labor Association (FLA), an international organization dedicated to protecting workers' rights, which requires participating companies to agree to subject their facilities to "independent external monitoring and assessments, based on risk factors and using a random sampling methodology."⁴⁰ The FLA's criteria for risk assessment include "[t]he risk of noncompliance presented in the country (or, where appropriate, region of such country) in which the Applicable Facility is located," underscoring the particular importance of rigorous audits in the context of China, where the risk of noncompliance is extraordinarily high, particularly where Uyghur forced labor is at issue.⁴¹

In line with prior CBP guidance and recognized labor standards, and to reflect the heightened clear and convincing evidence standard, the DHS should require companies attempting to rebut the presumption of forced labor under the UFLPA to subject their facilities to rigorous third-party audits. Moreover, the DHS should increase the scrutiny with which it reviews third-party audit procedures to reflect both the heightened evidentiary standard and the repressive environment within which auditors are forced to operate in China.

CBP's analysis of third-party audit evidence in its decision regarding Headquarters Ruling H317249⁴² demonstrates that the heightened clear and convincing evidence standard both requires third-party audits and subjects the audits themselves to increased scrutiny. To protest the detainment of their clothing shipment, Poof Apparel produced a Worldwide Responsible Accredited Production (WRAP) report, which concluded that the company's workers were Chinese nationals.⁴³ CBP went through the methodology of the WRAP report in detail and found that it was not sufficiently rigorous.⁴⁴ CBP noted that the auditors interviewed only 10 out of the 49 workers during the audit.⁴⁵ CPB further flagged inconsistencies between the WRAP report and statements that Poof Apparel made in its protest and application for further review. Given the deficiencies of the third-party audit, CBP found that the requirement of clear and convincing evidence to rebut CAATSA's presumption of forced labor was not met.⁴⁶

Additionally, the DHS should subject third-party audits to greater scrutiny because the documents typically used to support them under this heightened standard are unreliable in the Uyghur-forced-labor context. For example, in Headquarters Ruling H317249, CBP listed among the reasons it considered the audit unreliable the fact that the photocopied Chinese nationality

protections-withhold-release-order-wro/ (noting that CBP had issued a Withhold Release Order against palm oil products made by supplier FGV because it found ILO "indicators of forced labor in FGV's practices" and "informed FGV that it would consider a petition for the revocation of the WRO together with information or reports arising from audits from credible, unbiased, third-party auditing firms").

⁴⁰ *Charter Document*, FAIR LAB. ASS'N 24 (Feb. 5, 2021), https://www.fairlabor.org/sites/default/files/fla-charter_revised_feb_2021.pdf.

⁴¹ *Id.*

⁴² Application for Further Review; 22 U.S.C. § 9241(a); 19 U.S.C. § 1307; Protest No. 4601-21-125334; Poof Apparel; Dandong Huayang Textiles & Garments Co., Ltd.; Forced Lab., HQ H317249 (Mar. 5, 2021), <https://rulings.cbp.gov/search?term=h317249&collection=ALL&sortBy=RELEVANCE&pageSize=30&page=1>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

cards were not clearly legible and their authenticity therefore could not be determined.⁴⁷ In the Uyghur-forced-labor context, where the state has fully deployed its machinery to facilitate an extensive forced labor scheme, documents and other evidence are likely to be falsified to misrepresent labor conditions.⁴⁸ Consequently, the DHS should increase the scrutiny with which it approaches third-party audit evidence claiming to rebut the presumption under the UFPLA.

Like in CAATSA, the standard under the UFLPA necessitates scrupulous third-party audits. Yet, to be effective, third-party audits must, at the very least, be conducted independently, free from government or industry interference, and without prior notice of audit visits. China has made that impossible in Xinjiang. As several U.S. agencies' joint Xinjiang Supply Chain Business Advisory warns, third-party audits may not "be a credible source" because:

- Auditors have reportedly been detained, harassed, threatened, or stopped at the airport.
- Auditors may be required to use a government translator who conveys misinformation or does not speak in workers' first language.
- Auditor interviews with workers cannot be relied upon given the pervasive surveillance, and evidence of workers' fear of sharing accurate information.⁴⁹

This environment led the DHS, along with the other U.S. agencies contributing to the Business Advisory, to conclude that "repressive conditions make it unlikely that businesses will have the necessary access to their suppliers in Xinjiang to support meaningful remediation" of forced labor concerns.⁵⁰

Additionally, third-party auditors are impeded by the difficulty of conducting independent interviews with Uyghur individuals.⁵¹ As noted above, Uyghur workers may be required to speak to auditors through a translator who conveys misinformation. Or auditors may look the other way even after witnessing or hearing legitimate complaints. Factories frequently bribe auditors, and leading Chinese consulting firms advise that bribery is necessary in order to pass inspections.⁵² Furthermore, by spreading propaganda and disinformation designed to paint a "Happy and Free Uyghurs" image of life in Xinjiang, including by forcing Uyghurs to denounce forced-labor allegations, China significantly constrains the gathering of accurate information about abuses in Xinjiang.⁵³ In these circumstances, access to the supply-chain information

⁴⁷ Application for Further Review; 22 U.S.C. § 9241(a); 19 U.S.C. § 1307; Protest No. 4601-21-125334; Poof Apparel; Dandong Huayang Textiles & Garments Co., Ltd.; Forced Lab., HQ H317249 (Mar. 5, 2021), <https://rulings.cbp.gov/search?term=h317249&collection=ALL&sortBy=RELEVANCE&pageSize=30&page=1>.

⁴⁸ Finbarr Bermingham & Cissy Zhou, *Bribes, Fake Factories and Forged Documents: The Buccaneering Consultants Pervading China's Factory Audits*, S. CHINA MORNING POST (Jan. 22, 2021, 7:00 AM), <https://www.scmp.com/economy/china-economy/article/3118683/bribes-fake-factories-and-forged-documents-buccaneering>.

⁴⁹ *Xinjiang Supply Chain Business Advisory: Risks and Considerations for Businesses with Supply Chain Exposure to Entities Engaged in Forced Labor and Other Human Rights Abuses in Xinjiang*, DEP'T OF STATE, DEP'T OF THE TREASURY, DEP'T OF COM. & DEP'T OF HOMELAND SEC. 9 (July 1, 2020), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jul/Xinjiang-Supply-Chain-Business-Advisory.pdf>.

⁵⁰ *Id.* at 10.

⁵¹ AMY K. LEHR & MARIEFAYE BECHRAKIS, CTR. FOR STRATEGIC & INT'L STUDIES, CONNECTING THE DOTS IN XINJIANG: FORCED LABOR, FORCED ASSIMILATION, AND WESTERN SUPPLY CHAINS 10 (Oct. 2019), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/Lehr_ConnectingDotsXinjiang_interior_v3_FULL_WEB.pdf.

⁵² Bermingham & Zhou, *supra* note 48.

⁵³ Kao et al., *supra* note 26.

required to meet the clear and convincing standard established under the UFLPA is virtually impossible.

Since the publication of the Business Advisory in 2020, the ability of companies to conduct independent audits has further declined. In June 2021, China passed the Anti-Foreign Sanctions Law (AFSL), which provides for the punishment of “individuals and organizations” accused of “implementing or assisting in the implementation” of sanctions, either “directly or indirectly.”⁵⁴ As a result, companies and auditors are severely limited in their ability to gather the information necessary to ensure the absence of Uyghur forced labor in their supply chains. In the chilling environment created by the AFSL, even just asking the questions required to conduct basic due diligence could be seen as assisting the implementation of sanctions in violation of Chinese law.

In response to this inhospitable environment, at least nine auditing organizations have announced they will not conduct audits in Xinjiang.⁵⁵ Particularly telling, the Better Cotton Initiative, which had previously partnered with the Xinjiang Production and Construction Corps (a quasi-military organization that the United States has sanctioned for its direct connections with egregious human rights abuses against ethnic Uyghurs and other Turkic people), said it was suspending operations in Xinjiang “based on the recognition that the operating environment prevents credible assurance and licensing from being executed.”⁵⁶ This exodus of auditors, many of whom cite the impossibility of continuing to operate under the Chinese government’s surveillance and repression, means that it would be exceedingly difficult for an importer under current conditions to rebut the presumption under the UFLPA.

Importers might argue that the difficulty of conducting rigorous independent audits should justify waiving the third-party audit requirement and substituting, as adequate evidence, internal due diligence measures alone. This position is fundamentally flawed because it both ignores the fact that companies have strong incentives to water down their internal due diligence programs in response to pressure from China, as was discussed in Section 3, and misunderstands or ignores the heightened standard of the UFLPA. To instill an “abiding conviction” in the

⁵⁴ *China’s New Anti-Foreign Sanctions Law: Understanding Its Scope and Potential Liabilities*, MORRISON FOERSTER (June 30, 2021), <https://www.mofo.com/resources/insights/210630-chinas-new-anti-foreign-sanctions-law.html>.

⁵⁵ See Eva Xiao, *Auditors to Stop Inspecting Factories in China’s Xinjiang Despite Forced-Labor Concerns*, WALL ST. J. (Sept. 21, 2020, 11:41 AM EDT), <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706> (noting that at least five auditors—Bureau Veritas SA of France, TÜV SÜD AG of Germany, Sumerra LLC of the United States, RINA SpA of Italy, and U.S. nonprofit certification organization Worldwide Responsible Accredited Production—have pulled out of Xinjiang); *DQS CFS Responded*, BUS. & HUM. RTS. RES. CTR., <https://www.business-humanrights.org/en/latest-news/dqs-cfs-responded/> (last visited Mar. 10, 2022) (noting DQS has pulled out of Xinjiang); *Intertek Responded*, BUS. & HUM. RTS. RES. CTR., <https://www.business-humanrights.org/en/latest-news/intertek-responded/> (last visited Mar. 10, 2022) (noting Intertek has pulled out of Xinjiang); *SGS Responded*, BUS. & HUM. RTS. RES. CTR., <https://www.business-humanrights.org/en/latest-news/sgs-responded/> (last visited Mar. 10, 2022) (noting SGS has pulled out of Xinjiang); Jacob Fromer, Cissy Zhou & Finbarr Bermingham, *Beyond Cotton, Another Thread in Xinjiang Supply Chain Creates New Snag for Global Textile Firms*, U.S.-CHINA RELS. (Mar. 28, 2021, 11:00 PM), https://www.scmp.com/news/china/article/3127323/beyond-cotton-another-thread-xinjiang-supply-chain-creates-new-snap?utm_source=copy_link&utm_medium=share_widget&utm_campaign=3127323&module=inline&pgtype=article (noting Better Cotton Initiative has pulled out of Xinjiang).

⁵⁶ Fromer et al., *supra* note 55.

factfinder that the supply chain is free of forced labor, an independent audit is necessary. As to the fairness of requiring third-party audits under difficult circumstances, the DHS's implementing regulations must emphasize that it is the party "who bore the burden of meeting the clear and convincing evidence standard that must bear the risk of error from the inadequacy of the information available."⁵⁷

It has long been the practice of CBP to tailor the meaning of satisfactory due diligence to the context in which the company operates. In the assessment of the Congressional-Executive Commission on China, "due diligence in Xinjiang is not possible."⁵⁸ In this context of impossibility, due diligence requirements cannot be satisfactory. The financial incentives for companies to evade the UFLPA in order to preserve the Chinese government's good will undermines the credibility of generic due diligence programming, while the police-state environment in Xinjiang makes it impossible for independent auditors to verify companies' claims about their supply chains. This dire situation will necessarily prevent importers, in almost all cases, from meeting the burden of proof required to rebut the presumption of forced labor under the UFLPA.

5. Due diligence requirements should apply to all U.S. companies, regardless of size, and to direct and indirect suppliers throughout the companies' supply chains.

In drafting an enforcement strategy for the UFLPA, the DHS is tasked with providing guidance to importers regarding due diligence and supply-chain-tracing requirements. Considering the unique situation in Xinjiang, these requirements should mirror the rigorous standards set forth in the UNGP. First, the DHS should specify that due diligence and supply-chain-tracing requirements will apply to all U.S. companies, regardless of size. All U.S. companies have the moral obligation to ensure that their activities are free of forced labor. Given the strong language of section 3 of the UFLPA—prohibiting the importation of *all* "goods, wares, articles, or merchandise mined, produced, or manufactured wholly or in part" by forced labor⁵⁹—this obligation is binding under domestic law. The international human rights framework echoes this obligation: UNGP 13(a) calls on all companies to "avoid causing or contributing to adverse human rights impacts through their own activities."⁶⁰

Furthermore, the DHS should specify that U.S. companies have the legal obligation to ensure that the activities of both their direct and indirect suppliers are free of forced labor. UNGP 13(b) requires companies "to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."⁶¹ Commentary to this guiding principle defines "business relationships" as including "relationships with business partners, entities in its value chain, and

⁵⁷ *Colorado v. New Mexico*, 467 U.S. 310, 323 (1984).

⁵⁸ STAFF OF CONG.-EXEC. COMM'N ON CHINA, GLOBAL SUPPLY CHAINS, FORCED LABOR, AND THE XINJIANG UYGHUR AUTONOMOUS REGION 7 (2020), <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Staff%20Report%20March%202020%20-%20Global%20Supply%20Chains%2C%20Forced%20Labor%2C%20and%20the%20Xinjiang%20Uyghur%20Autonomous%20Region.pdf>.

⁵⁹ Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, § 3(a), 135 Stat. 1525, 1529 (2021) (codified as amended at 22 U.S.C. § 6901 note).

⁶⁰ *Guiding Principles on Business and Human Rights*, *supra* note 29, § 13(a).

⁶¹ *Id.* § 13(b).

any other non-State or State entity directly linked to its business operations, products or services.”⁶² Even if a supplier provides a company only with goods and services that aid their business operations but are not directly associated with the production of a finished product, this indirect supplier is still “directly linked” to the company’s business operations. Companies are therefore obligated under international standards to include even these indirect suppliers in their due diligence programming.

Failing to specify that due diligence and supply-chain-tracing requirements apply to all suppliers would undermine the effectiveness of the UFLPA. Consider, for example, analogous laws in two other jurisdictions: France and Germany. The French law (Law on the Duty of Vigilance)⁶³ reaches far down the supply chain, imposing due diligence and supply-chain-tracing requirements on stock companies above a certain size that require them to assess the human rights impacts of their own activities and those of subsidiaries under their control and of subcontractors and suppliers under their control or that of subsidiaries.⁶⁴ In contrast, the German law (Supply Chain Due Diligence Act),⁶⁵ which is set to go into effect in 2023, has a more limited scope. While it will similarly require stock companies above a certain size to conduct due diligence assessments of their activities and those of their direct suppliers, this requirement extends to indirect suppliers only if the stock companies have “proven knowledge” that these suppliers are engaging in human rights violations.⁶⁶ Because it leaves out too many suppliers, the German law is an example of an incomplete legislative measure to prohibit the import of goods made with forced labor. If the DHIL does not obligate companies to conduct due diligence regarding their indirect suppliers, they risk the importation of goods contaminated with forced labor, in contravention of the UFLPA. Implementing regulations for the UFLPA must make clear that the prohibition of goods made with forced labor and the requirement of clear and convincing evidence to rebut the presumption of forced labor applies to all companies.

6. DHS guidelines must apply additional scrutiny to goods produced “in part” with Uyghur forced labor.

When enacting the UFLPA, Congress recognized that goods produced in Xinjiang could be re-exported to other areas of China and beyond.⁶⁷ Goods produced “in part” in the Uyghur region and completed or repackaged in other parts of China require additional scrutiny.

⁶² *Id.*

⁶³ Loi sur le Devoir de Vigilance (Mar. 27, 2017), Art. 233-16 II. Com. Code.

⁶⁴ *France’s Loi de Vigilance*, HERBEL CONSULTING (Sept. 12, 2017), https://media.business-humanrights.org/media/documents/files/documents/Herbel_Consulting_Presentation_Global_Compact_UK_20170912-1.pdf; *French Corporate Duty of Vigilance Law (English Translation)*, EUR. COAL. OF CORP. JUST. (2020), <https://respect.international/french-corporate-duty-of-vigilance-law-english-translation/>.

⁶⁵ Lieferkettensorgfaltspflichtengesetz (Jan. 1, 2023).

⁶⁶ Press Release, *Germany: Call for an Improvement of the Supply Chain Due Diligence Act*, INT’L FED. FOR HUM. RTS. (Nov. 15, 2021), <https://www.fidh.org/en/issues/globalisation-human-rights/germany-call-for-an-improvement-of-the-supply-chain-due-diligence-act#:~:text=The%20Supply%20chain%20due%20diligence%20act%20was%20adopted%20by%20the,companies%20and%20their%20value%20chains.>

⁶⁷ Press Release, *Fact Sheet: New U.S. Government Actions on Forced Labor in Xinjiang*, WHITE HOUSE (June 24, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-new-u-s-government-actions-on-forced-labor-in-xinjiang/>.

CBP's ruling concerning Uniqlo addressed the issue of "in part" production in concluding that, in seeking to import goods made of Xinjiang cotton, the importer had "not provided substantial evidence to establish that the entities within the Xinjiang Production and Construction Corps (XPCC) that processed that cotton into the subject goods did so without the use of forced labor."⁶⁸ The cotton industry is a prime example of this kind of movement of goods up the supply chain; it would be almost impossible for Chinese exporters of textiles or garments not to rely on Xinjiang cotton, as Xinjiang produces 84% of China's cotton.⁶⁹

In the context of Uyghur forced labor in companies' supply chains, the DHS must be extra vigilant. In anticipation of the enforcement of the UFLPA, companies—including exporters, importers and suppliers—are likely to deploy increasingly sophisticated means of evading scrutiny, including the repackaging of goods produced in Xinjiang in other parts of China. These deceptive methods can create the illusion that these goods do not originate in Xinjiang, and implementing regulations for the UFLPA must ensure that this deception does not succeed.

7. When enforcing the UFLPA, the DHS should be cautious not to incentivize companies to rely on the forced transfer of Uyghur forced laborers outside Xinjiang.

The use of Uyghur forced labor has been observed outside Xinjiang in recent years.⁷⁰ Investigative journalism has exposed Uyghur forced laborers' increasing presence in other parts of China, including Jiangxi and Jiangsu provinces, under a government-sponsored transfer scheme.⁷¹

Despite the geographic focus of the UFLPA on Xinjiang, the DHS must clarify that the act's lack of reference to Uyghur workers in other parts of China does not constitute permission to exploit their labor in, for example, Shanghai. Further, when implementing the rigorous standard that the UFLPA requires, the DHS must take all necessary steps to counteract the perverse incentive for companies to increase their reliance on the transfer of forced labor outside Xinjiang, knowing that they face a less strenuous enforcement regime under 19 U.S.C. § 1307.

Strongly worded DHS guidance is necessary to affirm the clear congressional message and consensus of the international community that Uyghur forced labor is a grave human rights violation, irrespective of the region in which it occurs.

⁶⁸ Headquarter Ruling, Application for Further Review; 19 U.S.C. § 1307; Denial of Protest No. 270421154598; Uniqlo Co., Ltd.; Entry 231-2840311-6; Xinjiang Production and Construction Corps; XPCC; [] Withhold Release Order; WRO; Forced Labor, https://www.customsmobile.com/rulings/docview?doc_id=HQ%20H318182&highlight=uniqlo.

⁶⁹ Helen Davidson, *Xinjiang: More than Half a Million Forced to Pick Cotton, Report Suggests*, GUARDIAN (Dec. 15, 2020, 01:36 AM EST), <https://www.theguardian.com/world/2020/dec/15/xinjiang-china-more-than-half-a-million-forced-to-pick-cotton-report-finds>.

⁷⁰ VICKY XIUZHONG XU, DANIELLE CAVE, DR. JAMES LEIBOLD, KELSEY MUNRO & NATHAN RUSER, AUSTL. STRATEGIC POL'Y INST., UYGHURS FOR SALE: 'RE-EDUCATION,' FORCED LABOUR AND SURVEILLANCE BEYOND XINJIANG 21 (2020), <http://ad-aspi.s3.ap-southeast-2.amazonaws.com/2021-10/Uyghurs%20for%20sale%20OCT21.pdf?VersionId=z1RFV8AtLg1ITRpzBm7ZcfnHKm6Z0Ys>.

⁷¹ *Id.*

Conclusion

The UFLPA represents a milestone in the global effort to end Uyghur forced labor and hold companies accountable for their complicity with human rights abuses in Xinjiang. In order to fulfill the legislative intent of this important act and to enable the United States to exercise the moral leadership on this issue that the act has embraced, rigorous implementation is required. China exerts systematic pressure on companies to violate U.S. and international law and to ignore the human rights abuses that pervade their supply chains. The DHS has the opportunity to counteract these incentives by insisting that importers meet a heightened evidentiary standard and meaningful procedural requirements in order to rebut the presumption of forced labor.

In practice, many companies will inevitably find themselves forced to choose between honoring the UFLPA and their international human rights commitments, on the one hand, and continuing to operate in China, on the other. When companies face this choice, the DHS must emphasize that the solution is not to engage in a watered-down model of due diligence that omits any mention of Uyghur labor or to seek other loopholes aimed at undercutting the UFLPA's intent. Given the enormous human suffering at stake, these companies should instead be required to change their sourcing relationships and divest from Xinjiang completely. The strongest possible implementation measures are urgently needed to meet the UFLPA's clear and convincing evidence standard and to combat the exploitation of Uyghur forced labor.